IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SANDRA LILLY,

Plaintiff,

v. Hon.
Case No.: 17-

LIFE INSURANCE COMPANY
OF NORTH AMERICA,
a Pennsylvania corporation,

Defendant.
____/

COMPLAINT

Plaintiff, SANDRA LILLY, through her attorneys, ILANA S. WILENKIN and FELDHEIM & WILENKIN, P.C., complains against the above-named Defendant as follows:

I. Jurisdiction and Venue

1) This Court's jurisdiction exists under the Employee Retirement Income Security Act of 1974 ("ERISA"), specifically, 29 U.S.C. §§ 1132(e)(1) and 1132(f), which provisions grant this Court the jurisdiction to hear civil actions to recover benefits due under the terms of an employee welfare benefit plan.

2) The subject welfare benefit plan consists of, *inter alia*, a long-term disability insurance plan as well as life insurance coverage with a waiver of premium due to total disability, which, upon information and belief, is sponsored by Just Energy U.S. Corp. and underwritten and administered by Defendant Life Insurance Company of North America ("LINA") for the benefit of Just Energy employees.

3) 29 U.S.C. § 1133 provides a mechanism for the administrative or internal appeal of benefit denials. Plaintiff ("Ms. Lilly") has either exhausted all of her appeals or has been denied access to a meaningful and/or full and fair pre-suit appellate review. This matter is ripe for juridical review.

4) Pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391, venue is proper in the Eastern District of Michigan.

II. Nature of Action

5) This is a claim seeking disability income benefits pursuant to the Just Energy U.S. Corp. Health and Welfare Benefit Plan ("the Plan"), which, upon information and belief, is sponsored by Just Energy and underwritten and administered by LINA, and which Plan was intended to provide long-term disability income benefits as well as life insurance with waiver of premium to Just Energy employees, including Ms. Lilly. This action is brought pursuant to § 502(a)(1)(B) of ERISA - 29 U.S.C. § 1132(a)(1)(B).

III. The Parties

6) Ms. Lilly is 54 years-of-age. She was, and continues to remain, a resident of Southfield, Michigan.

7) LINA is a Pennsylvania corporation, with its resident agent being: The Corporation Company, 30600 Telegraph Rd., Ste. 2345, Bingham Farms, MI 48025.

8) During all relevant times, the Plan constituted an "employee welfare benefit plan," as defined by 29 U.S.C. § 1002(1), and, incidental to her employment, with Just Energy, Ms. Lilly received coverage under the Plan as a "participant," as defined by 29 U.S.C. § 1002(7). This claim relates to benefits due under the above-described Plan.

IV. Factual Statement/Medical History

9) Ms. Lilly began working for Just Energy as a Customer Service Representative on or about March 30, 2015.

10) Ms. Lilly stopped working on March 24, 2016 due to the following non-exhaustive list of serious medical conditions:

- Chronic, significant cervical, radicular pain;
- left-sided numbness and weakness;
- relapsing-remitting MS and/or possible multiple sclerosis;
- low back pain; and
- high blood pressure.

11) Ms. Lilly has not engaged in any substantial, gainful activity since March 24, 2016.

12) After satisfying the Plan's 90-day elimination period, Ms. Lilly applied to LINA/Just Energy to begin receiving long-term disability benefits on or about June 23, 2016.

13) LINA denied Ms. Lilly's claim on August 31, 2016.

14) Ms. Lilly appealed LINA's adverse decision, which included, but is not limited to, the following objective evidence and opinions:

A. Medical Evidence

15) **9/19/15 brain MRI (w/out contrast)**

1. Diffuse periventricular and subcortical white matter hyperintensities. Given the patient's age, demyelinating disease such as multiple sclerosis must be considered versus chronic small vessel ischemic changes.

2. Multilevel cervical spine disc disease with moderate impression on the ventral cord predominantly at C4-C7 and T12-L1 herniation incompletely imaged. (LINA Claim File)

16) **9/20/15 brain MRI (with contrast)**

There are periventricular signal abnormalities seen in a manner that is nonspecific. The findings may be on the basis of chronic ischemic white matter change demyelinating disease. Vasculitis could be given consideration. There is no abnormal enhancement. (LINA Claim File)

17) **6/16/16 brain MRI**

1. No acute intracranial process is seen.
2. Demonstration of multiple punctate areas of hyperintense T2 FLAIR signal involving bilateral supratentorial subcortical white matter and patched areas of hyperintense T2 FLAIR signal involving the periventricular white matter without pathological enhancement or restriction diffusion.
   Although the findings are nonspecific, can be seen in the patient with demyelinating disease. However, there is no evidence of active demyelination. (LINA Claim File)

18) **6/16/16 cervical MRI**

C3-C4 level: Mild narrowing of the right neural foramen due to uncovertebral joint and facet degeneration. Mild central disc protrusion with presence of annular fissure.

C4-C5 level: Mild central disc protrusion to the right side abutting the cord with a mild deformity of the ventral aspect of the cord without abnormal T2 signal in the cord. The neural foramen appears patent.

C5-C6 level: Moderate disc protrusion paramedian to the right abutting the cord with mild deformity of the ventral aspect of the cord without abnormal T2 signal in the cord. There is a mild narrowing of the right neural foramen.

C6-C7 level: There is a presence of annular fissure with mild central disc protrusion abutting the cord with a minimal deformity

> of the ventral aspect of the cord without abnormal T2 signal in the cord. Mild narrowing of the right neural foramen is seen.
>
> C7-T1 level: A 4 mm perineural cyst is seen at the left neural foramen. Otherwise unremarkable. (LINA Claim File)

19) On November 17, 2016, Evanthia Bernitsas, M.D. prepared a report supporting Ms. Lilly's disability, in relevant part opining as follows:

> Sandra Lilly is u***nder my care for Relapsing-Remitting Multiple Sclerosis***. Sandra has been under my care since September 2016. I have examined Sandra and in my opinion, there is no doubt that due to the scope and complexity of Sandra's condition, she is unable to resume any type of gainful employment in the near or foreseeable future.
>
> I am in the process of finalizing her diagnosis. Currently ruling out Multiple Sclerosis, [which differs from relapsing-remitting MS.] It is a chronic debilitating disease. Patients experience unpredictable exacerbations. Patients can experience one symptom or a combination such as the common following {but not limited to): fatigue, visual problems, changes in cognitive function, dizziness/vertigo, sensory problems/pain, spasticity, depression, bladder and bowel dysfunction, gait impairment, speech and swallowing problems and tremors. Infections will cause patients to be susceptible to exacerbations.
>
> The results of MRI show degenerative disk disease and herniation of disks in some areas of the spine. She bas paresthesias in the neck and lower spine radiating to the legs, muscle pain and cramps, joint and back pain, and intermittent difficulty walking. (LINA Claim File)

20) Despite substantial evidence supporting disability, on March 14, 2017, LINA maintained its claim denial.

21) LINA's actions have now foreclosed all avenues of administrative appeal and this matter is ripe for judicial review.

22) Because valid, objective, and well-supported proofs establish that Ms. Lilly has met and satisfied the Plan's definition of disability as of June 23, 2016 going forward, she is entitled to receive long-term disability benefits and, if applicable, waiver of life premium, retroactive to the date they were wrongfully denied.

WHEREFORE, based upon the preceding reasons, Plaintiff prays for the following relief:

A) That this Court enter judgment in Ms. Lilly's favor against LINA and order the immediate payment of disability income and other employee benefits, including group life insurance policy, retroactive to the date that benefits were denied, approximately June 23, 2016.

B) That this Court order LINA to pay M. Lilly post-judgment interest on all benefits that have accrued as of the date of judgment in accordance with M.C.L. § 600.6013 and 600.6455.

C) That this Court award attorneys' fees pursuant to 29 U.S.C. § 1132(g).

D) That Ms. Lilly recovers all relief to which she may be entitled, along with the costs of litigation.

Respectfully submitted:

FELDHEIM & WILENKIN, P.C.

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